

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE, :
Plaintiff :
: No. 1:CV-00-0895
v. :
: (M.J. Smyser)
ROBERT W. MEYERS, et al., :
Defendants :
:

FILED
HARRISBURG

DEFENDANTS' MEMORANDUM
IN OPPOSITION TO PLAINTIFF'S MOTION
TO AMEND THE SUPPLEMENTAL COMPLAINT

MAY 09 2001
MARY E. D'ANDREA, CLERK
DEPUTY CLERK

Introduction

In this civil action for damages brought pursuant to 42 U.S.C. §1983, plaintiff has filed a fourth motion to supplement his complaint, dated May 3, 2001. By order dated February 23, 2001, the Court denied plaintiff's first and second motions to supplement and granted plaintiff's third motion to supplement. The third motion added the claim that plaintiff's transfer from SCI-Rockview to SCI-Waymart for mental health evaluation in December 2000 was in retaliation for the exercise of protected rights, which is the subject of the fourth motion to supplement.

Defendants oppose plaintiff's latest motion to supplement and submit this memorandum in opposition.

Argument

While the decision whether to allow a party to supplement his pleading is committed to the discretion of the Court, Nottingham v. Peoria, 709 F.Supp. 542, 544 (M.D.Pa. 1988), there is no persuasive reason to permit plaintiff's latest supplement. Plaintiff's most recent motion to supplement does not seek to add allegations concerning events subsequent to the supplement permitted by the Court on February 23, 2001. All that the proposed supplement would do is add a legal argument to the factual allegations already before the Court concerning plaintiff's transfer to SCI-Waymart. As such, the proposed pleading would not withstand a motion to dismiss and, therefore, leave to file it should be denied. Untied States v. Princeton Gamma-Tech, Inc., 817 F.Supp. 488, 496 (D.N.J. 1993).

Conclusion

For the above-stated reasons, plaintiff's motion to amend the supplemental complaint dated May 3, 2001 should be denied.

Respectfully submitted,

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By:

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DATE: May 9, 2001

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CERTIFICATE OF SERVICE

I, **GREGORY R. NEUHAUSER**, Senior Deputy Attorney General
for the Commonwealth of Pennsylvania, Office of Attorney General, hereby
certify that on **May 9, 2001**, I caused to be served a true and correct copy of the
foregoing document **Defendants' Memorandum in Opposition to Plaintiff's**
Motion to Amend the Supplemental Complaint, by depositing it in the United
States mail, first-class postage prepaid to the following:

Terrance Montague, BZ-2761
SCI-Rockview
Box A
Bellefonte, PA 16823-0820

GREGORY R. NEUHAUSER
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